IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

THURSDAY, THE 27TH SEPTEMBER 2007 / 5TH ASWINA 1929

Crl.Rev.Pet.No. 367 of 2000()

MC.113/1992 of JUDL. MAGISTRATE OF FIRST CLASS COURT-I, ATTINGAL.
.....

REVN. PETITIONER: COUNTER- PETITIONER

NAZUMUDEEN (NAZIM, A.H),
S/O.ABDUL KHARIM, SHAJIMA MANZIL
AVANAVANCHERY, P.O., ATTINGAL.

BY ADV. SRI.V.N.ACHUTHA KURUP
SRI.B.S.SWATHY KUMAR

RESPONDENTS: PETITIONER & STATE
----

1. **SULFI, D/O. ABDULRAHIMAN,**
SHYJU MANZIL,
CHEERANIKKARA, KARAMCODE,
THEKKADA VILLAGE (NOW RESIDING AT
LAILA MANZHIL, MANGALAPURAM,
THONNAMMAL P.O., MELTHONNIKKAL VILLAGE)

2. **STATE OF KERALA, REP.BY PUBLIC PROSECUTOR,**
HIGH COURT OF KERALA, ERNAKULAM.

BY ADV. SRI.P.GOPALAKRISHNAN NAIR
PUBLIC PROSECUTOR SRI.C.K.SURESH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 22/06/2007, THE COURT ON 27.09.2007 PASSED THE FOLLOWING:

tss

CRRP. NO.367/2000

ORDER ON CRL.MP. NO.2170/2000 IN CRL.RP. 367/2000

DISMISSED

27.09.2007 **SD/- K.R.UDAYABHANU, JUDGE**

/TRUE COPY/

P.S.TO JUDGE

tss

K.R. UDAYABHANU, J.

CRL.R.P.NO. 367 OF 2000

DATED THIS THE 27TH SEPTEMBER 2007

ORDER

The revision petitioner is the counter petitioner in M.C.No.113/1992, the proceedings initiated under Section 3(1)(a) and (d) of the Muslim Women (Protection of Rights on Divorce) Act,1986 (hereinafter referred to as 'the Act') and under orders to pay a sum of Rs.50,000/- and the vlaue of one sovereign of gold ring which is estimated at Rs.3000/- and also to pay a sum of Rs.1,50,000/- which is the value of 50 sovereigns of gold ornaments and to pay a sum of Rs.4500/- as maintenance during the iddat period and Rs.90,000/- is reasonable and fair provision to the petitioner.

2. It is the case of the petitioner/wife in the M.C. (hereinafter to be mentioned as petitioner) that she was married to the counter petitioner/revision petitioner (hereinafter to be mentioned as counter petitioner) on 6-9-1992 and that at the time of Acharamvayppu ceremony a sum of Rs.50,000/- and a gold ring weighing one sovereign was given to the counter petitioner. On the first night in the house of the petitioner itself she was subjected to very cruel sexual activities and that he consumed liquor and compelled the petitioner to view blue film. On the next day she was taken to the

house of the counter petitioner and she was asked to serve liquor to her friends and when she refused she was ill-treated. On the next day, she had to be hospitalised . While she was undergoing treatment at Dr.Govindan's City Nursing Home, Thiruvananthapuram, the counter petitioner pronounced talak on 18-9-1992. She was inpatient in the hospital from 8-9-1992 upto 21-9-1992. Hence the span of marriage is only for 12 days. She has claimed Rs.2 lakhs as reasonable and fair provision and Rs.7500/- as maintenance for iddat period , Rs.50,000/- and one sovereign of gold ring which was given to the counter petitioner as Acharam and 50 sovereigns of gold ornaments given at the time of marriage.

3. The evidence adduced in the matter consisted of the testimony of Pws.1 and 2 and Exts.P1 to P3 and Ext.C1 and CPWs.1 to 5 and Ext.D1 series.

4. Counter petitioner has filed a counter before the court below alleging that the lady was afflicted with mental illness and in the first night itself she exhibited visible symptoms of mental illness that she undressed, started reading Koran, attempted to jump into the well etc.etc. and the next day morning she was taken to the Government hospital, Kanyakulangara and thereafter to the house of the counter

petitioner; and on the second night at the house of the counter petitioner also she behaved in the same manner as in the first night and on the next day, i.e. third day of marriage she was admitted at Dr.Govindan's City Nurisng Home wherein Dr.Surarajamony, Psychiatrist treated her. According to him, the insanity of the petitioner was suppressed and hence the marriage is void. According to him, the matter was talked over with the father's brother of the petitioner and it was agreed that the counter petitioner is to pronounce talak. According to him, he pronounced talak only two times. According to him, the gold ornaments were with the counter petitioner and he was not in possession of the same. The contention that there was fraud and misrepresentation in order to obtain the consent of the counter petitioner to the marriage was rejected as it was found in view of the admission of CPW1, i.e. the counter petitioner and the version of PW2, the father of the petitioner that the father of the counter petitioner was closely acquainted with PW2, the father of the petitioner and hence, there is no scope for any suppression of the illness if any of PW1. No medical records were produced to prove that the petitioner was afflicted with insanity prior to the marriage. As noted by the court below, the evidence of PW5,

Dr. Surarajamony is not at all helpful to the case set up by the counter petitioner. He has only stated that he has very vague memory of PW1 and that he could not say anything about the illness of the petitioner without verifying the records. Hence, the contention as to the insanity of PW1 is liable to be rejected outright in view of the evidence adduced in the mater. As held by the court below the evidence of PW4, a lady neighbour of the counter petitioner was found to be totally unreliable. The evidence of PW4 that the petitioner and the counter petitioner came to the house of counter petitioner at about 11 a.m. on the second day of marriage was found to be contrary to the version of CPW1 that he and the petitioner went to his house on the second day of marriage at 5 p.m..

5. CPW1 has no case that he pronounced only two talaks and that he has not divorced the petitioner when he was in the witness box. In Ext.C1 power of attorney, it is specifically mentioned that he is entrusting PW2 to file counter etc. in the case instituted by his divorced wife. In no uncertain terms it is mentioned in Ext.P1 talak nama that he has divorced the petitioner. Hence, as held by the court below the contention that there is no valid talak has no merit.

6. It was brought out from the evidence of PW1 that at the time

his elder sister was married in 1980, a sum of Rs.20,000/- was given as Acharam and when his next sister was married in 1987 an amount of Rs.25,000/- was given as Acharam. Hence, the version of CPW1 that there is no ceremony of Acharamvaipu stands disproved from the version of CPW1 himself. It was brought out that Pw2, the father of PW1 was working in the Middle East from 1978 upto 1992. Hence, it was found that he should be somewhat affluent and hence the version of Pws.1 and 2 that Rs.50,000/- and gold ring weighing one sovereign was given as Acharam at the Acharamvaipu ceremoney held on 16-8-1992 was upheld. I find that the finding of the court below is fully justified in the circumstance.

7. It was also found that PW1 on the third day of marriage was taken straight to the hospital from the house of the counter petitioner and it is the version that she did not wear any ornaments when she was taken to the hospital. It was during the inpatient treatment period in the hospital that the counter petitioner pronounced talak. From the hospital, PW1 went straight to her parental home. Hence, the version of Pws.1 and 2 that the ornaments were retained at the house of the counter petitioner appeared true. Moreover, the version of CPW1 and that of Cpws.2 and 3 that at the time of pronouncement of

talak which according to them took place at Jama ath in the room of Pw2., the ornaments were given back were found to be contradictory. It is the version of CPW1 that the ornaments were with PW1 when she left, but according to CPWs.2 and 3, the ornaments were handed over to the petitioner's party at the time when the talak was pronounced at the jama ath. Hence the version of CPws.1 and 2 were found to be unreliable. Counter petitioner has produced Ext.D1 series of photographs to show that the same would not show that she had worn 50 sovereigns of ornaments at the time of marriage. I find that looking at the photograph nobody can count the weight of the ornaments. As noted by the court below, PW2, the father of PW1 was working in the Middle East for a pretty long period from 1978 to 1992 and hence the version that 50 sovereigns of gold ornaments were given at the time of marriage was found trustworthy. No records of jama ath was produced to prove the alleged pronouncement of talak and returning of the gold ornaments.

8. It was found that Ext.P2 lawyer notice was sent on 29-9-1992 soon after Pw1 received Ext.P1 talak nama by post. All the contentions raised herein that the payments etc. and the claim of gold ornaments are mentioned in Ext.P2 . At the time of the

proceedings, the counter petitioner had returned from the Gulf and had started a textile shop. It was also found that at the time of evidence he had married for the third time after divorcing the 2nd wife also. Hence, in view of the fact that the petitioner hailed from affluent circumstance and the counter petitioner is running a textile shop,the amount of maintenance ordered at the rate of Rs.1500/- per month cannot be said to be excessive. In the circumstances, I find no reason to interfere in the findings of the court below. The revision petition is dismissed.

K.R.UDAYABHANU, JUDGE

ks.

K.R.UDAYABHANU, J

CRL.R.P. NO. 367 of 2000

ORDER

27-9-2007